IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

CYNTHIA MURPHY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:09CV00007
	)	
DOLGENCORP, INC.,	)	
	)	
Defendant.	)	
TERESA HALE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:09CV00014
	)	
DOLGENCORP, INC.,	)	
	)	
Defendant.	)	

OPINION AND ORDER

C. Lance Gould, Beasley, Allen, Crow, Methvin, Portis & Miles, P.C., Montgomery, Alabama, for Plaintiffs, and Ronald E. Manthey, Morgan, Lewis & Bockius LLP, Dallas, Texas, for Defendant.

The parties have again filed a motion seeking approval of settlements of these related cases under the Fair Labor Standards Act. I previously denied approval because of the parties' insistence on the confidentiality of the settlement terms

without showing good cause. *Murphy v. Dolgencorp, Inc.*, No. 1:09CV00007, 2010 WL 3766946 (W.D. Va. Sept. 21, 2010).

I continue to find that I cannot approve the settlements without knowing the terms thereof, although the parties continue to ask me to do so on that basis. As an alternative, they ask me to consider the written terms either secretly, in camera, or by having them stated orally in an open, but hopefully empty, courtroom.

As I earlier elaborated, these procedures preferred by the parties do not, in my opinion, conform to my responsibilities under the FLSA or under the law generally. *See id.*, 2010 WL 3766946, at *1.[1]

The parties suggest another alterative, which I eluded to in my earlier opinion, which is to file and seal the settlement agreements for a limited period of time. As good cause for such a procedure, they represent that there are approximately 800 similar cases pending against the defendant in this and other federal courts around the nation, in which all of the plaintiffs are represented by the same counsel. They contend that keeping the terms of other settlements from each of these plaintiffs is

[1] It is agreed that settlement of an employee's FLSA action must be approved by the court through "a stipulated judgment after scrutinizing the settlement for fairness." *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1353 (11th Cir. 1982). Nevertheless, the parties represent that some federal judges in other districts have approved settlements in these cases without learning the terms, simply on the basis of a statement by counsel that the settlements are fair. I can only express my profound disagreement with that procedure.

beneficial in order to allow negotiations to concentrate on the specific merits of each individual case. They represent that plaintiffs' counsel have agreed that they will not divulge the terms of another settlement to any of their individual clients.[2]

It is true, as the parties assert, that the individual facts of each case are significant. Indeed, I have so ruled in denying summary judgment for the defendant in Teresa Hale's case. *Hale v. Dolgencorp, Inc.*, No. 1:09CV00014, 2010 WL 2595313, at *2-3 (W.D. Va. June 23, 2010) (holding that to determine if an individual store employee is exempt from overtime under the FLSA's executive exemption requires a fact-intensive inquiry, unique to each store's situation). The issue in each of these cases is whether the employee's primary duty is management, which requires an analysis of various factors, including the amount of time spent by the employee in managerial duties. *Id.* Among the many stores operated by the defendant, those factors vary based on the circumstances of each store, as well as the preferences and circumstances of the various district managers. *Id.* at 4.

[2] I assume, of course, that no aggregate settlement of all plaintiffs' claims is involved, since ethical rules prohibit multiple representation in an aggregate settlement where the participation of each person in the settlement is not disclosed to each client. Va. Rules Prof. Conduct 1.8(g); *see In re Hoffman,* 883 So.2d 425, 432 (La. 2004). I further assume that the clients understand and accept that their attorneys cannot tell them the terms of other settlements in the course of advising them as to whether they should accept a settlement offered. Of course, multiple representation has the likely advantage to the client of a better informed and more efficient advocate.

Under these circumstances, I find that good cause has been shown to seal the settlement agreements for a limited period of time. While the parties suggest three years, I find that two years ought to allow the parties the opportunity to negotiate settlement in most cases, and adequately balances the needs of the parties with the presumptive right of the public to access court records.

Accordingly, it is **ORDERED** as follows:

1. In connection with the requested approval of the settlements of these two cases, the parties must file under seal copies of the settlement agreements, together with (a) the amount of the plaintiffs' overtime and liquidated damages claims, and (b) the amount of attorneys' fees and expenses paid from the settlements, together with the basis for the calculation of the attorneys' fees; and

2. The materials described above will be filed under seal, not to be unsealed earlier than two years after filing.

ENTER: October 28, 2010

/s/ JAMES P. JONES
United States District Judge